

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PABLO BERIQUETTE, et al.,

Plaintiffs,

-against-

DANIEL F. MARTUCELLO III, et
al.,

Defendants.

No. 79-CV-5077 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

As set forth more fully in the Court's Order Preliminarily Approving the Modified Consent Order, Directing Notice to the Class and Scheduling a Fairness Hearing, (dkt. no. 813), the Court has approved the parties' proposed Notice to the Class. The parties may distribute to class members the signed and dated Notice that is appended hereto.

SO ORDERED.

Dated: December 4, 2023
New York, New York



LORETTA A. PRESKA
Senior United States District Judge

NOTICE OF PROPOSED SETTLEMENT OF *MILBURN* CLASS ACTION LAWSUIT

If you are incarcerated at Green Haven Correctional Facility, you are a member of the proposed settlement class affected by this lawsuit. This notice is about a proposed settlement of a class action lawsuit against the Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”) and the Superintendent of Green Haven Correctional Facility (“Green Haven”) in their official capacities alleging violations of federal rights.

ABOUT THE LAWSUIT

The *Milburn* lawsuit was filed in 1979 by prisoners who challenged how medical care was delivered at Green Haven. In 1980, the United States District Court for the Southern District of New York certified the case as a class action. In 1982, the parties entered into a Final Judgment in the form of a Consent Order, which was later modified several times. The last modification occurred in 1991, and under that Consent Order DOCCS and the Green Haven administration agreed to take certain steps to improve the delivery of medical care to Class members.

In 2014, the Defendants moved to terminate the Consent Order. In March of 2015, without any opposition from the former Class Counsel, the Court terminated the Consent Order. In 2016, certain individuals then incarcerated at Green Haven filed motions asking the Court to reconsider and when those were denied, some of those individuals filed an appeal to the United States Court of Appeals for the Second Circuit. In November of 2019, the Second Circuit reversed and remanded the lawsuit on the ground that there was no adequate class representative at the time of the termination. The Second Circuit ordered the motion to terminate to be heard again with class representatives who would have a chance to show current and ongoing violations of their federal rights.

On June 30, 2021, the Court substituted Class Counsel and the Court named new representative Plaintiffs. The Class Representatives are currently: Pablo Beriquete, Diogenes Filpo, Lawrence Lewis, Milan Heggs, Alonzo Jacobs, and David Rhodes. Since that time significant litigation activity has occurred, including document and deposition discovery, reports by experts on both sides, and updated briefing on the motion to terminate. After substantial good faith discussions among the Parties and counsel, several conferences with the Court, and without any admissions of violations of the Plaintiffs’ rights, the Parties have agreed to settle the lawsuit by entering into a new Modified Consent Order.

WHY AM I RECEIVING THIS NOTICE?

The Modified Consent Order must be approved by the Court before it can go into effect. The details of the Settlement, summarized below for convenience, are contained in the Modified Consent Order. The purpose of this Notice is to inform you of the proposed settlement in the form of the Modified Consent Order and to give you a chance to object to the terms.

ABOUT THE CONSENT ORDER

The following is only a summary of the provisions of the Modified Consent Order provided for your convenience. The Modified Consent Order itself has the terms of the proposed settlement preliminarily approved by the Court. Copies of the full Preliminarily Approved Modified Consent Order are available for review in the Law Library at Green Haven, the Medical Clinic at Green Haven, on designated block notice boards or you can get a copy by writing to Co-Class Counsel: Law Office of Amy Jane Agnew, P.C., 36 Page Hill Road, Far Hills, New Jersey 07931 and requesting a copy.

The Modified Consent Order grants injunctive relief only, which means that the parties are asking the Court to approve their plan to remedy the alleged patterns of violations of federal rights at Green Haven. This lawsuit, now 44 years old, has never included a claim for damages and the Modified Consent Order does not and cannot include money damages. **This means that the settlement does not entitle you or any member of the Class to a cash payment.** It also means that the settlement does not in any way support or extinguish any claim you may have for money damages in a separate lawsuit.

The Modified Consent Order only addresses issues concerning medical care at Green Haven. If you are transferred to another facility or you are released from DOCCS' custody, you are no longer a member of the Class and the terms of the Modified Consent Order no longer apply to you.

CONTENTS OF MODIFIED CONSENT ORDER

THIS SUMMARY OF THE TERMS OF THE MODIFIED CONSENT ORDER IS PROVIDED ONLY FOR CONVENIENCE AND IS NOT PART OF THE PARTIES' AGREEMENT. THE TERMS OF THE MODIFIED CONSENT ORDER WILL CONTROL OVER THE SUMMARY SET FORTH BELOW.

At Intake, Green Haven officials will:

- Arrange for incarcerated individuals at Green Haven, and those arriving at Green Haven, to have access to a copy of the Modified Consent Order as described above.
- Not automatically cancel scheduled referrals to specialist or diagnostic testing upon an incarcerated individual's transfer to Green Haven, and existing prescriptions should be continued until the incarcerated individual transferred to Green Haven meets with his new medical provider.

Regarding Medical Staffing, Green Haven officials will use best efforts to:

- Maintain specified medical staffing levels at Green Haven, including the numbers of providers, nurses, and administrators.
- Maintain enough clerical staff members to ensure patients, their lawyers, and family members can get timely copies of medical records.
- Train all medical staff on how to use language lines.

At Sick Call, Green Haven officials will:

- Ensure a provider or Registered Nurse conducts sick call four (4) days per week.
- Ensure that the sick call provider or nurse wears a name tag.
- Enter all sick call encounters in the computer system so Class Counsel will be able to tell if patients are seen and their complaints followed.
- Provide secure envelopes for sick call slips.
- Ensure that all patients can request renewed medical permits through sick call instead of waiting to see a provider directly.
- Ensure that no patient is threatened with disciplinary action for attending sick call or for seeking access to healthcare services.

For Medication Administration, Green Haven officials will:

- Ensure that no-shows for medications or refusals are properly tracked.
- Ensure that medications are not discontinued until the patient meets with his provider to discuss the change.
- Ensure that no discontinuations occur solely based on “safety and security concerns.”
- Ensure that all medical staff are trained on DOCCS policies concerning chronic pain medication.
- Ensure that any need for adjustment to one-on-one medications that cannot be facilitated by a provider or Registered Nurse at sick call is addressed by a provider within 3 business days.

To Provide Timely Referrals to Providers and Specialists, Green Haven officials will:

- Ensure that a patient referred to a provider from block or emergency sick call will be seen the same day if the condition is emergent and within seven days if it is urgent.
- Ensure that, across Green Haven, patients’ average wait times are no more than 90 days for routine specialty appointments.
- Ensure that, across Green Haven, patients’ average wait times are no more than 21 days for urgent specialty appointments.
- Ensure that optometry referrals will not be denied solely because the patient has been seen by an optometrist within the last two years.
- Track whether providers are following the recommendations of specialists.

To Provide Patients Receive Diagnostic Testing Results, Green Haven officials will:

- Ensure that patients can receive completed diagnostic testing results at Sick Call.
- If it is determined that diagnostic testing should be reviewed with a provider, an appointment will take place within two weeks of Green Haven’s receipt of the results.
- Ensure that all diagnostic tests results are entered into the computer system.
- Ensure that if the tests are normal and need no follow up a note will be sent to the patient and if an appointment is necessary the follow up is promptly scheduled.

To Maintain a Unit For the Physically Disabled (UPD), Green Haven officials will:

- Utilize C-1 and C-4 as a UPD with housing priority given to mobility-impaired patients.
- Develop and publish an FOM policy on how the UPD will be operated.
- Create a UPD Committee to determine housing decisions based on medical criteria.
- Ensure UPD patients will have their 1:1 medications administered on the unit.
- Ensure that medical supplies are delivered to the UPD patients in a reasonable manner.
- Ensure that UPD patients who are using recreation time on the gallery have reasonable access to their cells for purposes of accessing medication, therapeutic and medical devices during recreation times.
- Ensure that a sufficient number of pushers are available to UPD patients during programming and/or callout hours to assist those UPD patients who have been assigned a pusher.
- Ensure a Porter is available to assist UPD patients with physical tasks during recreation times.
- Ensure that all security personnel assigned to the UPD are trained to conduct rounds.

To Provide Patients With Necessary Therapeutic and Medical Devices, Green Haven officials will:

- Ensure timely delivery of standard and certain custom-fitted medical devices on the terms set forth in the Modified Consent Order, including maintaining a back-up vendor for devices fabricated on a regular basis.

To Guarantee Improved Emergency Medical Responses, Green Haven officials will:

- Ensure that security staff do not wait to call in a request for emergency medical attention until a superior officer arrives on the scene.

To Improve Patient Confidentiality, Green Haven officials will:

- Ensure that unless requested by a medical provider or judged necessary for security, security members stay sufficiently distant from a healthcare encounter.
- Supply each block with sick call envelopes so security staff cannot read sick call slips.
- Remind security personnel at line up that they may not discuss the medical status or diagnoses of patients with personnel who do not have a need for the information.

To Improve Grievance and Complaint Responses Regarding Medical Issues, Green Haven officials will:

- Ensure that responses to medical grievances and complaints are substantive and do not just repeat the dates of medical encounters or merely direct patients back to sick call or their providers without explanation.
- Ensure that all Green Haven medical staff receive training on ADA-compliant individualized assessments and the needs of patients with serious mobility issues.
- Ensure that medical staff do not deny medical verification for a reasonable accommodation request without personally examining the patient and documenting the reasons for denial.

MONITORING

The Modified Consent Order allows for Co-Class Counsel at the Law Office of Amy Jane Agnew, P.C. to monitor Green Haven's compliance with the terms of the Settlement. Monitoring will be accomplished in part through the production of certain documents by Green Haven which are listed in the Modified Consent Order.

Co-Class Counsel will also be requesting individual patient medical records (with patient consent) and collecting Monitoring Forms from Class members which will be available on each block in Green Haven.

CAN I OPT OUT OF THE SETTLEMENT?

YOU MAY NOT WITHDRAW OR OPT OUT OF THIS LITIGATION. You do not have the right to exclude yourself from this Settlement. The class was certified under Federal Rule of Civil Procedure 23(b)(2), meaning the remedy the Class sought in this litigation was for injunctive relief, rather than a monetary award. As a class member in this type of case, you do not have the right to opt out of the Settlement.

As a Class member, you are represented by the Class Representatives and Class Counsel, unless you enter an appearance through privately retained counsel of your choice (at your expense). Co-Counsel for the Class are Wachtell, Lipton, Rosen & Katz and the Law Office of Amy Jane Agnew, P.C. After entry of the Modified Consent Order, monitoring and Class representation will be undertaken solely by the Law Office of Amy Jane Agnew, P.C.

ATTORNEY'S FEES AND COSTS

As a Class member, you are not required to pay the attorneys' fees of the litigation provided you continue to be represented by Class Counsel. The Law Office of Amy Jane Agnew, P.C. will seek Court approval for an award of attorneys' fees and reimbursement of litigation expenses from Defendants in an amount to be determined by the Court. The Court's review and approval of the Modified Consent Order is separate from the court's review and approval of any fee award. Wachtell, Lipton, Rosen & Katz is providing all their services and costs to the Class without seeking payment or reimbursement.

EFFECT ON OTHER LITIGATION

This Settlement does not foreclose any individual member of the class from bringing a lawsuit for money damages relating to any injuries suffered by the individual. The Settlement does preclude members of the class from initiating lawsuits requesting injunctive relief concerning the issues identified and addressed in the Modified Consent Decree. Issues not identified and addressed in the Modified Consent Order may be the subject of other litigation.

IF YOU DO NOT OBJECT TO THIS SETTLEMENT:

You do not have to do anything.

IF YOU OBJECT TO THE SETTLEMENT:

You must mail a statement explaining why you object to the Settlement to Class Counsel. The deadline for mailing the objection to Class Counsel is January 12, 2024. Please include your Name, DIN#, housing location, your signature, an explanation of what portions of the Modified Consent Order you object to, and the reasons you object. If you would like the opportunity to briefly address the Court during the Fairness Hearing, please put that in your objection. If you require an interpreter, please include that in your objection as well. Mail your objection to:

Law Office of Amy Jane Agnew, P.C.

Milburn Objection

36 Page Hill Road

Far Hills, New Jersey 07931

Class Counsel will provide all written objections received by the deadline to the Honorable Loretta A. Preska and to Defendants' counsel. **YOU MUST MAIL YOUR OBJECTION BY THE DEADLINE**; you cannot object to this Settlement after the deadline has passed. Even if you object, you do not have the ability to "opt out" of this Settlement if the Court approves it.

FAIRNESS HEARING

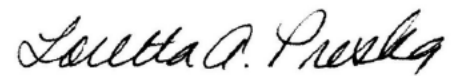
The Court will hold a hearing to decide whether to approve the Modified Consent Order as fair, reasonable, and adequate (the "Fairness Hearing"). All timely written objections will be considered by the Judge. Only class members who have submitted written objections before the deadline may ask to speak at the Fairness Hearing, but you do not have to attend. The Fairness Hearing is scheduled for January 31, 2024 at 2:30 p.m. at the Daniel Patrick Moynihan United States Courthouse, Courtroom 12A, 500 Pearl Street, New York, New York 10007. A video feed will be provided at Green Haven so the Court may hear objections from Class Members who have requested to be heard and have a substantive objection. If you request to be heard by the Court, you will receive notice that you will be heard by the Court on or before January 20, 2024.

ADDITIONAL INFORMATION

If you have questions about this notice, you may write to Co-Class Counsel at Law Office of Amy Jane Agnew, P.C. 36 Page Hill Road, Far Hills, New Jersey 07931.

Dated: December 4, 2023

BY ORDER OF THE COURT



Loretta A. Preska
Senior United States District Judge